



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,079	06/01/2001	Sigfrid Soli	45568-00412	3838

7590

11/17/2005

MARSH FISCHMANN & BREYFOGLE LLP  
Suite 411  
3151 South Vaughn Way  
Aurora, CO 80014

EXAMINER

PENDLETON, BRIAN T

ART UNIT

PAPER NUMBER

2644

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/872,079

Applicant(s)

SOLI ET AL.

Examiner

Brian T. Pendleton

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 17 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroll et al, US Patent 6,342,035 in view of Lindemann et al. Kroll et al disclose a middle ear implanted hearing aid comprising input transducer 210, electronics unit 205, coil 300 (external transmitter), and permanent magnet 305 which is attached to staples 50 (which is part of the middle ear). The electronics unit 205 has an input port, converter system, and an output port. Kroll et al does not disclose that the input port receives an input signal reflecting a reference acoustical output of an audiometer. Lindemann discloses a hearing aid with in situ testing capability comprising input port 110 and receiver 118. Column 4 lines 8-42 disclose that an external test generator (such as an audiometer) can be coupled to the input port 110 to supply diagnostic test signals to the hearing aid receiver 118. Thus, Lindemann teaches having an input port receiving a reference acoustical output of an audiometer. It would have been obvious to one of ordinary skill in the art at the time of invention to supply diagnostic signals in the Kroll apparatus from an audiometer, as taught by Lindemann, for the purpose of providing standardized audiological signals to the hearing aid user. Claims 1, 3-7 and 13-15 are met. As to claim 2, the modified Kroll apparatus would couple the audiometer signals to the electronics unit 205 which one of ordinary skill in the

Art Unit: 2644

art would have known necessitated the use of the headphone output module of the audiometer for supply the audiometric signals to the hearing aid. Regarding claims 8 and 9, it was obvious to receive feedback from a patient during an audiological examination and determining operating parameters for a hearing aid. Per claims 10-12, the method claimed is accomplished by the modified Kroll et al apparatus.

Claims 16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taenzer in view of Kroll et al. Taenzer discloses an apparatus for monitoring magnetic hearing aids comprising the external portion of the hearing aid 18, hearing aid analyzer 90, magnetic-to-acoustic converter 100 (reference receiver system and signal processor), and an inherent output port to the hearing aid. Taenzer does not disclose that the hearing aid is a middle ear implantable hearing aid. However, such hearing aids were well known at the time of invention, as evidenced by Kroll et al. Middle ear implantable hearing aids also used magnetic coupling to permanent magnets. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize the test box taught by Taenzer for the hearing aid in Kroll et al for the purpose of testing an magnetically based hearing aid.

***Allowable Subject Matter***

Claim 22 is allowed.

Claims 17 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Pendleton whose telephone number is (571) 272-7527. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian T. Pendleton  
Primary Examiner  
Art Unit 2644



btv